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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRISHA LAVONNE HAYS,

Defendant and Appellant.

F077106

(Super. Ct. No. BF165811A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Eric Bradshaw and Harry A. Staley (retired judge of the Kern County Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), Judges.†

Erica Gambale, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Peña, J. and Smith, J.

† Judge Staley ruled on defendant's *Pitchess* motion; Judge Bradshaw presided at defendant's jury trial and sentenced defendant.

Defendant Patrisha Lavonne Hays appeals the denial of her *Pitchess*¹ motion for discovery of a probation officer's personnel records. She asks that we independently review the records reviewed by the trial court and determine whether the court abused its discretion by not providing her access to any records. We affirm.

BACKGROUND

On October 3, 2016, defendant was lawfully arrested while on misdemeanor probation. Probation Officer Cesar Rivera conducted a cursory search of defendant and asked her if she had anything illegal on her person. She said she did not. She was placed in the backseat of a patrol vehicle and transported to jail. On the way to the jail and again at the jail, Rivera repeated his question to her and each time she denied having any contraband. But when she removed her belt, a baggie containing methamphetamine fell to the floor. Another baggie containing methamphetamine was found in the backseat of the patrol vehicle.

On December 6, 2016, defendant was charged with willfully bringing methamphetamine into the jail (Pen. Code,² § 4573; count 1) and misdemeanor possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a); count 2). It was further alleged that defendant had suffered a prior "strike" conviction within the meaning of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and had served two prior prison terms (§ 667.5, subd. (b)).

On June 2, 2017, defendant filed a *Pitchess* motion for discovery of Rivera's personnel records. On July 12, 2017, the court granted the in camera hearing but denied discovery of any records.

On January 11, 2018, a jury found defendant guilty as charged and the trial court found the allegations true.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

² All statutory references are to the Penal Code unless otherwise noted.

On February 9, 2018, the trial court granted defendant's request to dismiss her prior strike conviction. The court sentenced her to four years on count 1, plus two consecutive years for the prior prison term enhancements. On count 2, the court imposed a 365-day term and stayed it pursuant to section 654.

On March 6, 2018, defendant filed a notice of appeal.

DISCUSSION

In her *Pitchess* motion, defendant requested disclosure of Rivera's personnel records tending to show (1) false statements in reports, (2) false testimony, and (3) other evidence of complaints or dishonesty. The trial court granted the motion and conducted an in camera hearing. The court then denied the request for discovery. Defendant asks that we review Rivera's personnel records for any records relevant to these topics. The People do not object.

"A criminal defendant has a limited right to discovery of a peace officer's personnel records. [Citation.] Peace officer personnel records are confidential and can only be discovered pursuant to Evidence Code sections 1043 and 1045." (*Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 318.) "[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. [Citation.] Good cause for discovery exists when the defendant shows both 'materiality' to the subject matter of the pending litigation and a 'reasonable belief' that the agency has the type of information sought.' [Citation.] ... If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed. [Citation.] Subject to certain statutory exceptions and limitations [citation], 'the trial court should then disclose to the defendant "such information [that] is relevant to the subject matter involved in the pending litigation." ' ' ' (*People v. Gaines* (2009) 46 Cal.4th 172, 179.)

A trial court's decision on a *Pitchess* motion is reviewed under an abuse of discretion standard. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.) The exercise of that discretion "must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) We review the record for "materials so clearly pertinent to the issues raised by the *Pitchess* discovery motion that failure to disclose them was an abuse of *Pitchess* discretion." (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.) The record of the trial court's in camera hearing is sealed, and appellate counsel are not allowed to see it. (See *People v. Hughes* (2002) 27 Cal.4th 287, 330.) Thus, on request, the appellate court must independently review the sealed record. (*People v. Prince*, at p. 1285.)

We have reviewed Rivera's personnel records and find no relevant information in them. We conclude the trial court did not abuse its discretion by deciding not to disclose any records.

DISPOSITION

The judgment is affirmed.